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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Chairman William Kennard and Commissioners
Federal Communications Commission
445 12th Street, S.W.
Room 204B
Washington, D.C. 20554

**Re: Application by New York Telephone Company for Authorization to
Provide In-Region, InterLATA Services in New York; CC Docket No.
99-295**

Dear Chairman Kennard and Commissioners:

The undersigned providers of competitive telecommunications in New York respectfully ask the Commission to require Bell Atlantic – New York (“Bell Atlantic”) to comply with its Competitive Checklist obligation to provide combinations of dedicated transport and loop network elements, including special access facilities, to competitive carriers before Bell Atlantic is granted interLATA authority in this proceeding. As the Commission recently reaffirmed, an incumbent LEC’s provisioning of “high capacity dedicated transport offerings will encourage competition and facilitate the deployment of advanced services.”¹ We have introduced extensive evidence into this record demonstrating that Bell Atlantic has systemic problems provisioning and repairing dedicated transport to competitive carriers.² Despite the fact that these facilities are used by Bell Atlantic’s competitors for interconnection, internal network transport, and customer access, Bell Atlantic’s reply comments fail to acknowledge, far less propose any solution to, the unresolved problems in provisioning and repairing such critical facilities. Bell Atlantic simply declares that this issue is not covered by the Checklist and therefore is irrelevant to the outcome of its Section 271 application. Not only is Bell Atlantic wrong about dedicated transport not being a Checklist Item, but its analysis fails to recognize that Section 271 gives the Commission jurisdiction to consider various obstacles to competition in New York imposed by Bell Atlantic as part of the public interest analysis. 47 U.S.C. § 271(d)(3)(C); *see also* Teligent Comments, at 19-21. We are deeply concerned that this “defense by silence” might succeed in the short time allowed for the Commission’s deliberation under the Act. Consequently, we are making

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, ¶ 323 (rel. November 5, 1999) (“*UNE Remand Order*”).

² Focal Comments, at 5-6; *id.*, at Attachment A, ¶¶ 10-14; Omnipoint Comments, at 7-13; Omnipoint Reply Comments at 1, 8; Teligent Comments, at 14-19 (Teligent “has faced for the past ten months recurring provisioning problems with these [dedicated transport] facilities”).

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a joint appeal to ensure that this important issue will be addressed and resolved in the Commission's order.³

We have reason to believe Bell Atlantic has discussed with Commission Staff its current inability to provision or repair dedicated transport facilities ordered by competitive providers. While we were not present at these meetings, we believe that Bell Atlantic likely argued that its current failures: (1) are largely attributable to its merger with NYNEX, which supposedly led to a failure to forecast increased demand for interoffice dedicated transport adequately; and (2) will supposedly be cured by the allocation of increased resources, as well as by Bell Atlantic's own economic self-interest in selling dedicated transport.

We do not question the good faith of any person who has promised Staff that this problem will be fixed. However, we have demonstrated in the present record that Bell Atlantic repeatedly has promised to resolve this issue, and those promises have gone unfulfilled over the past three years.⁴

More fundamentally, the claim that Bell Atlantic's economic self-interest can be trusted to provide a solution is specious. If anything, Bell Atlantic's economic incentive moves it in the other direction, leading it to undermine the ability of competitive providers to offer a competitive service using its dedicated transport. Accordingly, the Commission has no choice but to implement an effective enforcement plan to ensure that Bell Atlantic comes into, and stays within, compliance concerning this important matter.

³ Competitive providers such as the undersigned sometimes connect end users to their switches by purchasing special access arrangements from Bell Atlantic. These special access arrangements are functionally no different than Bell Atlantic's Expanded Extended Link ("EEL"), as the Commission recognized in its *UNE Remand Order*. In that decision, the Commission stated: "we note that incumbent LECs routinely provide the functional equivalent of the EEL through their special access offerings." *Id.*, at ¶ 481. Indeed, the Commission recognized that carriers could convert special access arrangements to unbundled network elements under 47 C.F.R. § 51.315(b), although it also ruled that such converted arrangements must carry a "significant" amount of telephone exchange service in addition to exchange access. *UNE Remand Order*, ¶ 480 ("the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover, requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices."); see *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, CC Docket No. 96-98, at ¶ 5 (rel. November 24, 1999) ("*Supplemental Order*"). For these reasons, special access, as used by the undersigned, plainly qualifies as a combination of local transport and loops under the Competitive Checklist or, at the very least, falls under the Commission's jurisdiction to evaluate the impact of Bell Atlantic's Application upon the public interest. See 47 U.S.C. § 271(c)(2)(b)(v); 47 U.S.C. § 271(d)(3)(C). This letter will refer to such special access arrangements under the general term "dedicated transport."

⁴ See Omnipoint Comments, Affidavit of Dale Eckhoff, at 5 & Exhibit C (June 15, 1998 letter of Antonio Yanez of Bell Atlantic - "Omnipoint is a valued customer of Bell Atlantic"). For example, even during the recent period of May to October, 1999, Bell Atlantic has continued to miss 86% of its firm order commitment dates for twenty-eight DS-1 installations for Omnipoint. See Omnipoint Reply Comments at 1, 8. Similarly, Teligent states that despite a Bell Atlantic commitment by its senior management to deliver four T-1 facilities per day in New York, on average only two are delivered per day. Teligent Comments, at 15-16.

There are no practical obstacles to the creation of such a plan for Bell Atlantic's provisioning and repair of dedicated transport to competitive providers. We believe the statistical measures proposed by the New York Public Service Commission for interconnection can be employed if certain important corrections are first made.⁵ However, we also agree with the Department of Justice that the NYPSC's proposed penalties associated with non-compliance are entirely inadequate to affect Bell Atlantic's behavior.⁶ Consequently, we propose the following plan and penalties:

For Installations of Dedicated Transport:

- 1) Bell Atlantic's installation intervals must comply with the promised tariff interval or, in the absence of tariffed intervals, must not exceed a reasonable 30 calendar day interval. If Bell Atlantic issues an install date outside of the tariffed interval or, if applicable, the 30 day interval, it should be subject to a \$100 penalty per additional day.
- 2) Install dates may not be unilaterally changed by Bell Atlantic once they have been issued.
- 3) Bell Atlantic should provide five days advance notice in writing or by email of any anticipated missed install date that is Bell Atlantic's responsibility or any rescheduling of an install date, as well as a detailed explanation for the miss/rescheduling.
- 4) The penalties for missed install dates, other than "customer not ready" or "acts of god," should be as follows: \$100 for the first day, \$500 for the second day; \$1,000 for the third day and each day thereafter, per the equivalent number of DS-1 circuit(s).⁷
- 5) Bell Atlantic would issue a full credit for all non-recurring installation charges associated with any missed install date.
- 6) Bell Atlantic must reach agreement with the competitive provider's responsible representative that a "Customer Not Ready" ("CNR") characterization of an install miss is appropriate before Bell Atlantic creates a CNR business record.
- 7) Bell Atlantic must implement a detailed automated tracking system specifically for dedicated transport orders from competitive providers within three months of the Commission's Order in CC Docket No. 99-295.

⁵ The measurements should capture the installation interval between the time an accurate dedicated transport order is received by Bell Atlantic and the time that the end user accepts the facility as properly installed. The current measurements employ the date of Bell Atlantic's Firm Order Commitment ("FOC"). However, we demonstrated in our comments that FOCs are altered and revised at Bell Atlantic's complete discretion, and thus cannot be relied upon in any meaningful compliance plan. See, e.g., Focal Reply Comments, at 6. Furthermore, the current interconnection measurement needs to apply not just to interconnection, but to all dedicated transport facilities provided to competitive carriers, including internal network transport and access to a competitive provider's end users.

⁶ See DOJ Evaluation, at 38-40.

⁷ These penalties would not be in lieu of other remedies available to the parties under federal or state law.

For Dedicated Transport Outages:

- 1) In the context of conducting repairs, when Bell Atlantic requires the presence of a competitive provider's technician (*i.e.*, Bell Atlantic is denied access to a building site without an authorized representative of the competitive carrier or a competitive carrier's technician's presence is necessary for troubleshooting), Bell Atlantic is required to commit to a two hour window for its technician to meet the competitive carrier technician. Missed appointments by either party will be reciprocally compensable by the non-appearing party to the appearing party at Bell Atlantic's tariffed amount or other customary hourly billing rate for its technicians.
- 2) Bell Atlantic will reciprocally compensate competitive carriers for their technician time at a site (at the usual Bell Atlantic technician rate) if either Bell Atlantic demands that the competitive carrier's technician be present even though there are no site-access problems or in cases where a Bell Atlantic network problem caused the outage.
- 3) Bell Atlantic will obtain the competitive provider's acceptance of the restored dedicated transport circuit before closing out the trouble ticket.

In proposing this compliance plan for Bell Atlantic's provisioning and repair of dedicated transport to competitive providers, we emphasize that our business success and our continued access to the capital markets will be largely determined by Bell Atlantic's compliance with the plan and not by Bell Atlantic's payment of penalties. Consequently, we have proposed the penalties we believe are necessary to ensure Bell Atlantic's performance, keeping in mind Bell Atlantic's economic incentive not to provide its competitors with adequate provisioning or repair of dedicated transport.

In summary, Bell Atlantic's application as presently framed does not demonstrate that Bell Atlantic complies with, among other requirements, Competitive Checklist Items Four and Five, relating to the provisioning of loops and local transport. As we recommended in our comments, the Commission should reject the Application until Bell Atlantic demonstrates consistent compliance with these Checklist Items. Central to making that demonstration, Bell Atlantic should adopt our proposal detailed herein.

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We would be pleased to discuss our proposal with you or the Commission's Staff at your convenience. Thank you for the opportunity to express our views on this important matter.

Sincerely,

Jonathan Askin
Vice President – Law
The Association for Local
Telecommunications Services

Carol Ann Bischoff
Executive Vice President and General Counsel
Competitive Telecommunications Association

James Falvey
Vice President, Regulatory Affairs
e.spire Communications, Inc.

Richard J. Metzger
Vice President, Regulatory and Public Policy
Focal Communications Corporation

Douglas G. Bonner
Arent Fox Kintner Plotkin & Kahn, PLLC
Counsel to Omnipoint Communications, Inc.

David S. Turetsky
Senior Vice President
Law and Regulatory
Teligent, Inc.

cc: Magalie Roman-Salas, Esq.
Randal Milch, Esq.
Frances Marshall, Esq.
Chairman, Commissioners, and Legal Assistants
Lawrence Strickling, Esq.
Robert Atkinson, Esq.
Carol Matthey, Esq.
Claudia Pabo, Esq.
Julie Patterson, Esq.